

ACCESS ALTERNATIVES

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By

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PREFACE

This paper is presented for fulfillment of the Management and Leadership Workshop attended by the author in March 1989. This paper is not an access manual, but is intended to supplement existing Bureau policies and guidelines on access acquisition. The purposes are to provide information to Bureau managers and employees on various alternatives that could be considered to acquire access to public lands and to provide information on types and sources of historical information available regarding access. To achieve these purposes, the paper is divided into two chapters.

When considering a specific access acquisition, the Bureau should consider all of the alternatives that may be available based upon the needs for the access (i.e., administrative versus public access, motorized versus non-motorized uses, etc.), the perceived willingness of the landowner(s), other needs of the landowner(s), and the impacts the use of the access route would have on adjacent lands. This analysis may determine that one method of acquisition would have a greater chance of success than another and establish a range, and/or priority, of alternatives to present to the landowner(s) in negotiations. Toward that end, Chapter One outlines various alternatives that could be considered to acquire access to public lands and some of the advantages and disadvantages of each method.

It is the author's experience that there are many instances in which legal access was dedicated in the past, but the existence of these rights has been forgotten over time. Documentation of existing legal access rights is one method of "acquiring" access and could preclude the need for the Bureau to acquire access through purchase or other means. Chapter Two is intended as a guide for researching existing rights and outlines the various types of documents that may exist and where these documents can be located. Examples of documents are also included in the appendix for illustration.

CHAPTER ONE

ACCESS ACQUISITION ALTERNATIVES

ACCESS ACQUISITION ALTERNATIVES

In the past, the BLM's efforts to acquire access to public land have been focused primarily on the fee purchase of access easements. However, other methods are available to "acquire" access that complement the purchase of easements. Use of these alternatives can make the fee purchase program more efficient and cost effective by concentrating limited acquisition monies on those cases where acquisition by purchase is the most desirable and most expedient method. These alternatives may not be available or appropriate in specific situations. This chapter contains a listing of these alternatives and the advantages and disadvantages of each.

The rights acquired for access are described in a legal document, usually a form of deed, that describes the location, the rights acquired, any restrictions, and or reservations or rights retained by the grantor. In general, an easement could be "exclusive" in which the United States (the grantee) would control the use of the road within the easement, or "nonexclusive" in which the grantor would retain control over the use of the road and the United States would be one of the users. Under an exclusive easement, other users would have to obtain permission or rights-of-way from the United States to use the easement, but under a nonexclusive easement, the grantor (the owner of the property) would retain this right and be able to grant other permission or easements. The easement could also have limitations on who could use the road; allowable users must be specifically mentioned or they could not use the road under the terms of the easement. An "administrative" access easement would generally be limited to activities for official business and might include use by any or all of the following: federal employees, licensees, permittees, agents, or contractors. A "public access" easement would allow use of the road by the general public. An easement providing public access could be either exclusive or nonexclusive. The term of an easement could be perpetual or could be limited to a certain time period.

FEE PURCHASE OF ACCESS EASEMENTS

Part 2100 of the BLM Manual, especially the BLM Manual Handbook H-2101-1, contains extensive information on the procedures and requirements for fee purchase of easements.

Advantages:

An easement should generally be less expensive than fee title acquisition of property. First, the area acquired would usually be a small acreage since the easement would be a strip of land the width and length of the road or trail. Second, the United States only acquires some of the rights of the property and the landowner retains ownership.

An easement may be the most appropriate method for acquiring administrative access. The landowner may not have a problem with allowing access for the Bureau for official purposes, and the acquisition costs should be relatively low.

Similarly, an easement may be appropriate when access is only needed for a short time period (e.g., one to two years for a proposed timber sale, etc.). The short duration should further reduce the cost of acquisition.

Disadvantages:

The landowner may not want to grant an easement, especially for public access, because of the perceived problems associated with traffic through the private property (litter, trespassing, open gates, etc.).

The Bureau's "fair market value" is a one-time payment based on the acreage within the easement corridor and is a percentage of the purchase price of the affected acreage. Some landowners have indicated they do not feel this is adequate compensation for the perceived problems and inconveniences the easement will cause during its tenure and is not representative of the benefits to the Bureau and the public. Another perception is that the Bureau's appraisal method does not adequately compensate the landowner for the impacts the easement has on the property adjacent to it.

The Bureau does not seem to have the ability to utilize many creative financing alternatives when purchasing easements. Although this factor is probably more critical when dealing with fee purchase of tracts of land rather than easements because of the amounts involved, the tax burden from the purchase may reduce the landowner's desire to sell. At this time, the only options that appear to be available to reduce the tax burden are installment payments over a specified number of years or to have the total easement divided into two parts, each conveyed in separate taxable years by the landowner. For example, half of the easement could be conveyed in late December and the remaining half conveyed in early January.

RECIPROCAL RIGHTS-OF-WAY AND RECIPROCAL EASEMENTS

The Bureau can accept reciprocal rights for access when we issue a right-of-way under the authority of 43 CFR Part 2800. Reciprocal easements can also be used for leases or permits issued by the Bureau under 43 CFR Part 2920.

Advantages:

The applicant may be willing to grant rights for access in return for a right-of-way granted by the Bureau because of cost effectiveness. Application processing fees and monitoring fees can be waived for reciprocal rights-of-way and the rental can be reduced proportionately.

Reciprocal rights-of-way are also cost effective for the Bureau since payment, in whole or in part, is through the right-of-way granted, and funds needed for the acquisition are eliminated or reduced.

Reciprocal easements may be appropriate for resolution of occupancy trespass, in terms of both rationale for allowing the use to continue and an option for settling trespass liabilities. Although a written opinion has not been prepared on this subject, contact with the Regional Solicitor's Office indicates there is nothing in the regulations that requires the payment of rental or penalties in cash. Thus, it appears it would be legal to accept an

access easement as full or partial settlement of the trespass liabilities and/or future rental. The fair market value of the easement would have to be determined by appraisal, but could be included in the same request as for the lease or permit. The easement acquired could be either temporary or permanent depending on the negotiations with the trespasser. A reciprocal easement could also be considered as a short-term resolution of the trespass and the access need while a long-term resolution, such as an exchange, is being processed.

Disadvantages:

Reciprocal rights-of-way would generally not be perpetual. However, most rights-of-way issued by the Bureau are for a 30-year period and are renewable. Since a reciprocal right-of-way would run concurrently with the right-of-way issued by the BLM it could still be considered a long-term access right.

EXCHANGES

Under Section 206 of FLPMA and the exchange regulations under 43 CFR 2200, the BLM can exchange for land and/or interests in land. In an exchange, access could be obtained through acquisition of 1) property that contains an access route, 2) property with an appurtenant easement (an easement that "runs" with a parcel), or 3) a combination of property and an easement.

Advantages:

Like reciprocal rights-of-way, exchanges can be cost effective for both the landowner and the Bureau. Payment is through the value of the property exchanged and expenses to both parties for processing are relatively small.

The Bureau's acquisition of the property surrounding an access route may eliminate a landowner's perceived problems with litter, trespass, etc., since these problems would become the Bureau's responsibility.

The landowner may be more willing to negotiate an exchange than an easement because he/she can also obtain a benefit (other than cash) through their acquisition of property. Some landowners have indicated an exchange is preferable because the compensation (ownership and use of the property in perpetuity) is more lasting than a one-time cash payment. In addition, the exchange of land would not result in the tax disadvantages that cash purchase would have.

Disadvantages:

An exchange may not be feasible if the landowner cannot identify any public land he/she wishes to acquire, if the Bureau is not willing to exchange the property the landowner wishes to acquire, if the landowner believes the appraised values of the properties are not adequate (i.e., too low for the offered private land and/or too high for the selected public land), or if the values of the properties cannot be equalized within the limits established by the regulations. In some cases, these problems might be solvable through land exchange pooling in which a "package" is developed involving a number of parties, some of whom would acquire public land and some of whom would convey land to the Bureau.

COOPERATIVE AGREEMENTS

Advantages:

Cooperative agreements, including memoranda of understanding, may be the most flexible of all options since there are no regulations governing how they are to be developed or what they can contain. In general, a cooperative agreement could be developed as long as the methods or results are not illegal. Review of the draft agreement by the Regional Solicitor's Office is recommended to ensure legality and that the agreement does what it is intended to do.

Disadvantages:

Cooperative agreements generally contain a provision that allows either party to terminate the agreement at any time upon notice to the other party. Thus, long-term planning for use of the access route may not be possible. Furthermore, the temporary nature of such an agreement might preclude capital expenditures (major maintenance, etc.) that are needed or desired for the full utilization of the access route. Cooperative agreements, especially with private landowners, would generally be a temporary or interim solution while a more permanent solution (i.e., exchange) is being processed.

ASSIGNMENTS/TRANSFERS FROM OTHER AGENCIES

Other agencies, especially state agencies, may have acquired easements that could be used by the public, or by the Bureau for administrative access. Instead of entering into a cooperative agreement, it may be desirable for the Bureau to have rights to the route in its name. For example, it is questionable whether the Bureau can maintain a road or portion of a road if it does not have a legal interest in the road.

Advantages:

Rather than acquiring an additional easement from the landowner, the existing easement would be acquired from the other agency, either through an assignment or a conveyance of the easement to the United States. Under this arrangement, the other agency or the public could still retain the use of the road and the Bureau would be able to use the road for commercial or administrative purposes and expend monies for reconstruction or maintenance.

Such an arrangement could be cost effective for both agencies. At worst, the Bureau might have to pay the other agency the fair market value of the easement, as would be required if another easement was acquired from the landowner. However, the future cost savings to the other agency may allow it to convey the easement with compensation other than cash payment. In one instance, an existing easement was acquired from the Colorado Division of Wildlife (CDOW) through the assumption of maintenance rather than cash purchase. The CDOW considered this arrangement as adequate compensation since its employees and the public would retain use of the road, but it would be relieved of the future maintenance costs assumed by the Bureau. The Bureau was relieved of the up-front costs of easement acquisition and maintenance was considered to be necessary in any event because of the commercial and administrative uses planned for the road.

Access acquisition may be possible without compensation to the other agency. The Farmers Home Administration (FmHA) has a program allowing federal and state agencies to obtain conservation easements or fee title to certain lands. This program, authorized under the Food Security Act of 1985 and the Agricultural Credit Act of 1987, is twofold. First, a landowner can voluntarily offer to grant a conservation easement in order to restructure an FmHA loan. Second, agencies can apply to FmHA for easements for conservation purposes or fee title to certain lands the FmHA has in its inventory through foreclosure. In either case, the acquiring agency does not have to pay for the easement. In one case, access easements, for both administrative and public access, were considered to satisfy the "conservation purposes" requirement because of the multiple use mission of the Bureau.

Under current drug enforcement laws, properties associated with the selling of illegal drugs (e.g., properties where drugs have been grown, manufactured, or distributed, or purchased with monies obtained through the sale of illegal drugs) can be seized by federal or state drug enforcement agencies. It may be possible for the Bureau to acquire properties or easements through the settlement of the drug case. The author is not aware of any instances where this has occurred in Colorado, but the Arcata Resource Area in California has acquired properties within the King Range National Conservation Area in this way.

DONATIONS

Easements or fee title to land can be accepted through donations from other entities or private landowners. Part 2100 of the BLM Manual, especially the BLM Manual Handbook H-2101-1, contains information on the procedures and requirements for processing donations.

The following two publications also contain extensive information that may be valuable when considering or processing a donation:

Small, Stephen J. Preserving Family Lands, A Landowner's Introduction to Tax Issues and Other Considerations. Boston: Powers & Hall Professional Corporation. 1988. (Available from: Preserving Family Lands, P.O. Box 2242, Boston, MA 02107; \$5.00 per copy)

Diehl, Janet and Thomas S. Barrett, et. al. The Conservation Easement Handbook, Managing Land Conservation and Historic Preservation Easement Programs. San Francisco: Trust for Public Land and Land Exchange Trust. 1988.

Advantages:

The obvious benefit to the Bureau is the cost savings of receiving the easement without having to expend acquisition funds.

In some cases, donation may be of more benefit to the grantor than sale to the Bureau because of the tax advantages. In addition, the Bureau will pay for title work and other costs that might normally be borne by the landowner. These costs are generally relatively small.

RESEARCH OF EXISTING ACCESS RIGHTS

The discovery of existing access rights could preclude the need for the Bureau to obtain a new right. Various sources and types of historical information available regarding access are presented in Chapter 2.

Advantages:

As with donations, discovery of an existing right could provide significant cost savings to the Bureau by precluding the need to purchase the easement.

Discovery of the access right could also force access to public land when it is known the landowner will not grant access through other means.

Disadvantages:

If the landowner and/or title insurance company does not willingly admit to the legality of the access right, considerable expense could be incurred through litigation. These legal costs could exceed the actual fair market value of the easement.

Research of all of the various records can involve a considerable commitment of time and manpower.

The access right could cause conflicts with the management prescriptions for particular areas and could create conflicts with other federal and state agencies. For example, a county road or public road could be found to exist within an area closed to the use of motorized vehicles.

CHAPTER TWO

ACCESS RESEARCH

ACCESS RESEARCH

INTRODUCTION

This chapter provides information on various sources and types of historical information that can be used to document the existence, or absence, of access rights. Examples of the various documents and records are included as illustrations in the Appendix. In those instances where a particular document may be found in several places, that fact will be noted under each source.

Most of the information comes from the author's experiences relative to access issues within the Glenwood Springs Resource Area. The availability and organization of various records may differ in other states or other areas within Colorado.

Obviously, the goal of the research is to find evidence that an access right was established in the past, even though the presence of that right has been forgotten about over time. The access right may be on a road or a trail, but in this document, the term "road" will be used for simplification. In general, such access rights would have been established primarily through the following ways:

1. Grant of an easement or right-of-way from one individual or entity to another.
2. Dedication as a County Road. As used in this document, a County Road is one included in a formal road system and under the jurisdiction of the County.
3. Dedication as a Public Road. As used in this document, a Public Road is a road over which an access right has been established and is open to travel by the public, but is not under the jurisdiction of any governmental entity. A public road may have been established through some form of dedication or through a court action.
4. R.S. 2477. A public road may also have been established under the terms of R.S. 2477. Although the effect is the same as Number 3 above, this type of public road is discussed separately for clarification and information purposes.

In 1866, Congress passed a law which states "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." R.S. 2477 was repealed by the FLPMA, but still applies to roads in existence prior to October 21, 1976. With regard to private lands, this means that a road in existence prior to patent could be a public road even if the road was not reserved in the patent. The Regional Solicitor's Office should be consulted on any questions relating to R.S. 2477, but some key points are:

- a. R.S. 2477 only granted a right-of-way across unreserved public land. National Forests, National Parks, etc. were exempt unless the road would predate the enabling legislation for the forest or park.

- b. Some states, Colorado included, hold that R.S. 2477 grants can be perfected by public use or by action by public authorities: resolution, assumption of control and maintenance, or expenditure of public funds (see Illustration 1, Colorado Revised Statutes 43-2-201).
- c. The critical date is not necessarily the patent date, but may be the date of entry (e.g., homestead entry).
- d. The width of the right-of-way established under R.S. 2477 is determined by state statute and would be the width under State law in effect at the time the road was established as a public road.
- e. Even if a road was identified as a County Road and subsequently abandoned, the road still may be a public road under R.S. 2477. The abandonment by the county may not have vacated the public's right to use the road, but only the county's responsibility for maintenance.

Discussions with the Regional Solicitor's Office indicate that the BLM or other agencies can assert the rights of the public and that establishment of a public road would not be "taking without compensation" because the BLM is only asserting a right that already exists. The Interior Board of Land Appeals (IBLA) has also ruled that BLM can make determinations respecting R.S. 2477 in cases where a determination would be helpful in the administration of the public land (DiRe, 55 IBLA 151 (1981) and Meeds, 26 IBLA 281, 83 I.D. 315 (1976)).

Another key point is that when an R.S. 2477 public road is established across public land the BLM loses all control over management of the road and cannot close or restrict its use. However, the BLM can control travel on the public land on each side of the road.

The following sources of information can be used to document whether or not an access right was ever established, but the research should not stop at that point. It is just as important to document whether or not an access right is still legally in existence or if it was subsequently legally vacated. In some cases, the research will span over 100 years of records.

BUREAU RECORDS

Master Title Plats (MTPs) and Historical Indexes (HIs)

The MTPs and HIs are the government's record of land ownership. The MTPs are a plat, and the HIs are a chronological listing of the actions on federal lands. The MTPs provide the patent number on all private lands and list the rights reserved by the United States when the patent was issued. For example, an "R/W" below the patent number indicates a right-of-way was reserved in the patent. The location and type of the right-of-way may not be shown or, if shown, the rights reserved may have been overlooked and/or forgotten through time. Copies of the patent, (see Illustration 2), obtainable from the Public Room in the Colorado State Office, will sometimes provide enough information to adequately map the location and type of rights reserved, but retrieval of the patent file from the archives may be necessary. Requests for patent files can be made through the Division of Lands and Renewable Resources in the Colorado State Office. Copies of the patents are also recorded in the county records. The HIs can be used to determine the date the patent was issued to reduce the time required to find the patent.

The MTPs and HIs also document actions on federal lands, such as rights-of-way granted or reserved to other entities. In particular, the Forest Service has reserved rights-of-way across public lands dating to the early 1900's. These rights-of-way were generally perpetual and are still in effect even if the lands were subsequently patented. Information and maps are in the case files located in the appropriate resource area office, district office, or Colorado State Office.

Cadastral Survey Plats and Notes

Many of the old surveys, especially those done in the 1800s and early 1900s, describe roads, trails, and other physical features encountered during the survey. The survey notes and survey plats document the location of these roads and trails (See Illustration 3). The notes and plats may refer to the road in generic terms ("wagon road") or may document the status of the road at the time of the survey ("county road"). The dates of the surveys may provide information on the approximate time a road or trail was constructed and whether it existed prior to the date of patent issuance.

A recommended starting point for researching possible R.S. 2477 roads is to compare the cadastral survey plats and notes with the patent dates on the MTPs. If a road is shown to be in existence many years prior to the first patent, a good case can probably be established. If the survey date and patent date are close, additional information may be required to determine if the road predates entry.

State Office Records

The Public Room records include the "Tract Book" which lists entry and patent dates for all private lands (See Illustration 4). This information is listed by township, range, and section. Information and/or copies are available upon request.

As stated above, the patent file could also be requested. Although the patent file is stored in the archives, all requests should be routed through the State Office. The patent file may contain correspondence, maps (required for Desert Land Entries), testimony from the entryman (homesteader) and character witnesses, investigation reports and testimony if the entry was contested, or other information that may include references to public or county roads.

Grazing Allotment Files

Each grazing permittee is required to provide proof of base property. Many times, the permittee will supply this proof by providing a copy of the deed when he/she acquired the property. The deed may describe the reservations on the property as simply "those matters of public record" or something similar, or may provide a list of the leases, easements, or other reservations (see Illustration 5).

Aerial Photographs

Aerial photographs can be used to document the location of historical routes. Just as important, aerial photographs may show that other routes did not or could not have existed. The Glenwood Springs Resource Area has photographs dating to 1950 and the Colorado State Office has some photographs dating to 1939. The Denver Service Center could also be contacted for information on available aerial photography.

OTHER AGENCIES' RECORDS

Through a comparison of the records of the U. S. Forest Service (USFS) and the MTPs, instances of easements, acquired by the USFS outside the boundaries of the National Forest, have been found that do not appear on Bureau records and that we were unaware existed. The USFS also maintains a comprehensive system on their computer and on maps showing rights they have acquired (see Illustration 6). Conversely, local USFS offices were unaware of some access that the Bureau had acquired. The Glenwood Springs Resource Area and the White River National Forest have exchanged information and have agreed to notify each other of any new acquisitions. Other Federal agencies, such as the Bureau of Reclamation, National Park Service, and Department of Energy, may have also acquired access of which the Bureau is not aware.

State agencies, particularly the Colorado Division of Wildlife (CDOW), have also acquired access easements on roads, riverbanks, etc. The rights acquired vary and many have been acquired only for short terms. Even though an access right may exist, the rights may not be sufficient to accommodate all of the Bureau's needs. Some easements have been interpreted to provide access for the general public for recreational activities, but not for administrative or commercial purposes by other users or agencies.

Aerial Photographs

In addition to the aerial photography available through Bureau sources listed above, the following sources may have information on aerial photography:

- a. The U.S. Department of Agriculture Photography Lab in Salt Lake City, Utah, - information on USFS and Soil Conservation Service photography (telephone: FTS 588-5856).
- b. The EROS Data Center in Souix Falls, Iowa, - to get a list of available photography, one needs to know the latitude and longitude of the desired area (telephone: FTS 784-7511, ask for Customer Services).
- c. National Archives and Records Administration, Cartographic Architectural Branch in Washington, D.C. - There is also an Aerial Photography Field Office in Salt Lake City.

Other Photography/Maps

The U.S. Geological Survey's (USGS) Photographic Library at the Denver Federal Center contains photographs dating to 1867, including photographs taken during the geologic studies of the western United States. Most of these photographs are ground photographs, with some aerial oblique photographs available. The photographs are indexed by subject and geographic location and lists of available photographs for specific areas may be obtained. In requesting such a list, it is helpful to provide the USGS quadrangle name(s) as well as the township, range, and section (telephone: 303-236-1010).

The USGS Main Library and Field Records Library, also located at the Denver Federal Center, contain copies of the historical quadrangles which may show that a road did or did not exist at the time the map was produced. The Field Records Library have these quadrangles cataloged by scale (7.5', 15', etc.), state, and quadrangle name. The USGS Earth Sciences Information Center at the Denver Federal Center also has many of these historic quadrangles on micro-film, cataloged by state and quadrangle name. It should be noted that the name of an historic quadrangle (i.e., a 15' quadrangle) may not be the same as the current quadrangle name (a 7.5' quadrangle).

COUNTY RECORDS

County records contain a wide variety of information on roads and access. The sources described below are usually filed with, or located in, the County Clerk's office. Most records in the County Clerk's office are in chronological order and research can be very time-consuming. Alternatively, a title company, whose records are arranged by property, could be contacted. However, a title company will charge a fee for providing the information or for an individual to search its records. Information on services available from a title company is discussed later.

- a. Road Users Report - In Colorado, portions of the taxes on gasoline and receipts from vehicles registrations are returned to counties to help pay for road maintenance. Since 1954, each county has been required to submit an annual report to the State, listing the roads the county is claiming on its system for maintenance, in order to receive these funds. This report generally consists of a county map and a list of each road showing starting and ending points and

mileage. Some counties have automated their lists (see Illustration 7). The reports may also include nonmaintained roads.

Counties submitted maps to the State prior to 1954, but it does not appear the maps were submitted on a regular basis. Maps dating to 1911, showing county road systems in both Eagle and Garfield Counties, have been found. It also appears the early maps were submitted to the U.S. Department of Agriculture, Bureau of Public Roads, but the author has not been able to determine if, or where, such maps have been archived.

The date a road appeared or disappeared on this report may help in locating other key documents. Court decisions indicate the presence or absence of a road on the report does not mean that an access right does or does not exist. For example, removal of a road from the report does not establish vacation or abandonment of the access right. Vacation can only occur through the process established under State law. Removal of a road from the report means the county is not maintaining the road and is not collecting funds for maintenance. While inclusion of a road on the report also does not establish an access right, counties are supposed to include only "open, used and maintained public highways" as defined in Colorado Revised Statutes (C.R.S.) 43-2-201 (§43-4-207(2)(b)), (1984). "Open, used and maintained" is defined as "legally open to public travel by ordinary motor vehicles at all times, usable at all times except during adverse weather conditions, and maintained by work or county maintenance crews ...".

- b. Road Petitions/Road Viewer's Reports - The road petition/road viewer process was one method of establishing county roads in the 1800's and early 1900's. Briefly, this process involved residents petitioning the county to make a certain road a county road, the County Commission would appoint a team of individuals (road viewers) to conduct an on-site inspection of the proposed road and make a recommendation to the County Commission, and the County Commission would either accept or reject the road as a county road. The date the County Commission acted on the proposal is usually shown on the road viewer's report, and the resolution establishing the road is contained in the County Commission Record. An example of a road petition, road viewer's report, and resolution are in Illustration 8. In some cases, the roads were surveyed, usually by the county surveyor, and the plats may be available in the county records.

Each of the counties within the Glenwood Springs Resource Area have the road petitions and road viewer's reports filed together. In addition, some counties also maintained "road record" books that duplicate the petitions and reports, but the author's experience is that road record books are incomplete.

If a road was accepted as a county road through this process, it should be determined whether or not the road viewer's report was recorded in the reception book and/or grantor-grantee index in the

County Clerk's office (see the following Item C for a description of these indexes). A recent Court of Appeals ruling (City of Lakewood v. William Mavromatis and United Bank of Denver; No. 88CA1139) states such recording is necessary to provide sufficient notice to subsequent purchasers of the property affected. The reception number is highlighted in the Illustration 8.

- c. County Commission Record - These books, each covering a certain period of time, contain the minutes of the County Commission meetings and would identify if and when the County Commission took action on a particular road petition/road viewer's report, deed, vacation, etc. Generally, there is an index to these actions, either a general index covering all books or an index in each book. It is the author's experience that actions are indexed alphabetically based on the indexer's perception of the key word (e.g., an action on a "road" may be under "R") and chronologically by year. There may also be cross-references on other key words, such as the location (e.g., "C" for "Canyon Creek Road") or the name of the individual or group that appeared before the Board.
- d. Right-of-way deeds - Some county roads were established through the granting of right-of-way deeds to the county (see Illustration 9). The county usually keeps these deeds separate from other records and may restrict their availability. However, copies of these deeds are in the property records, which are arranged chronologically. The location of a particular document ("book and page") can be found through any of the three indexes maintained by the county, each of which provide the names of the grantor and grantee, the date the document was recorded in the county records, and the book and page reference:
 - 1) Reception Book - This index is a chronological listing of each recorded document with each book covering a certain period of time. This index would mainly be used if one only knows the approximate date of the conveyance.
 - 2) Grantee Book - This index is arranged alphabetically by the name of the grantee with each book covering a certain period of time. The listing of the grantee in this index is dependent on the exact wording of the grantee in the deed. For example, a deed to Garfield County might be found under "G" for Garfield County, "B" for Board of County Commissioners, or "C" for County Commissioners.
 - 3) Grantor Book - This index is arranged alphabetically by the name of the grantor with each book covering a certain period of time.

Obviously, the above records could be used to locate any recorded access right from any entity to another, in addition to county roads, and could be used to establish the chain of title for any property within a county.

- e. Public roads - Public roads may have been established either through court decrees (see Illustration 10) or by resolution of the County Commission (see resolution in Illustration 8). In Colorado, public use over any consecutive 20 year period can qualify a road as a public road (adverse possession). Court decrees could be found in the records of the court, but are also generally recorded in the county records. The Pacific Reporter, which should be available in most county attorneys' offices, is another source for obtaining copies of court rulings. These roads may have been surveyed either by order of the court or by the county surveyor.

A person who closes any road with public access rights would be subject to criminal prosecution as a misdemeanor under State law (§43-2-201.1, C.R.S. (1984) (see Illustration 1). Another fairly recent law (H.B. 1166, §33-6-115.5, C.R.S. (1988 Supp.) made it a class 2 petty offense to erect barriers with the intent of denying access to lawfully designated hunting, trapping, and fishing areas. (see Illustration 11) (NOTE: The State is proposing recodification of this section of the C.R.S. and the new citation would be §33-6-114. The proposed recodification is in Illustration 11.). Thus, according to the Regional Solicitor's Office, the only action required by the Bureau to open a public road that has been closed is a letter to the County Sheriff requesting the road be opened. The relevant document(s) identifying the road as a public road should be enclosed with the letter. In addition, close coordination with the District Attorney and County Attorney is recommended. Following receipt of the letter, the County Sheriff should demand the road be opened or cite the person under the above laws. However, in one case in Garfield County, the County Sheriff has refused to open a road after the above procedures were followed, because of perceived liability to himself.

- f. Subdivision plats - Counties may require the dedication of roads to public use or for other administrative uses as conditions for approval of subdivision proposals. Such dedications are noted on the approved subdivision plats recorded in the county records and have the same result (public or administrative access) as if the road would have been dedicated through a right-of-way deed.
- g. Abstract index - The county may have an abstract index which is a listing of book and page references for each geographic area. For example, in Garfield County, this index lists references for each quadrant within each section. Although the index has not been kept up-to-date, references through 1955 have been found.
- h. Maps - Each county has maps which have been filed with the County Clerk that may include road surveys, old county maps, old road users reports, ownership plats, etc.

TITLE COMPANIES

Title companies' records contain the same property record information ("books and pages") as can be found in the county records. However, cases in Garfield

County have indicated title companies may not have all information related to road petitions/road viewers reports, county commission records, etc., that are not recorded documents. Title companies' records are cataloged by property rather than chronologically, which may reduce research time, however, a research fee will be charged. Some companies may allow a person to use their records, but again, will charge a fee for this privilege. Some of the services that may be available from a title company are:

- a. Title commitment/title insurance policy - These documents will list the current owner of the property and the reservations of record (rights-of-way, leases, etc.). However, these documents will only list the current existing reservations and will not show any rights that may no longer apply, such as an easement that was relinquished or vacated in the past. The cost of the title insurance policy is relative to the value of the property being acquired and insured.
- b. Ownership and encumbrance report - This document would also provide the current owner of the property and the existing reservations of record, but would generally be less expensive than a title insurance policy. One company in Garfield County currently charges \$125 for a written report and \$25 for a verbal report.
- c. Abstract of Title - This document is a listing of all recorded documents relating to a certain property, and normally includes copies of the subject documents. The abstract would include transactions that no longer are applicable (e.g., expired leases, etc.). The cost is unknown and would vary by the complexity of each property, but one company in Garfield County charges \$50 per hour for research.
- d. Blind listing - This is similar to an abstract, but is only the list of the book and page references relating to a property. One would then have to research each reference to determine its significance. The cost would be less than for an abstract because the company's research time is limited to producing the list of references.

OTHER SOURCES

Other sources of information which may be useful include:

- a. Local libraries - Many county and city libraries include a section devoted to local history.
- b. Local historical societies/museums - In addition to the same documents that a library may contain, historical societies may also contain copies of newspapers, maps, interviews with residents, and other information.
- c. Interviews with senior citizens - The Bureau can conduct its own interviews with senior citizens and other residents to determine past events and uses of a particular road. These interviews might also establish the approximate time period that a certain event occurred that would be useful in locating documents in the records previously discussed.

APPENDIX

PART 2

COUNTY AND OTHER PUBLIC HIGHWAYS

43-2-201. Public highways. (1) The following are declared to be public highways:

(a) All roads over private lands dedicated to the public use by deed to that effect, filed with the county clerk and recorder of the county in which such roads are situate, when such dedication has been accepted by the board of county commissioners. A certificate of the county clerk and recorder with whom such deed is filed, showing the date of the dedication and the lands so dedicated, shall be filed with the county assessor of the county in which such roads are situate.

(b) All roads over private or other lands dedicated to public uses by due process of law and not heretofore vacated by an order of the board of county commissioners duly entered of record in the proceedings of said board;

(c) All roads over private lands that have been used adversely without interruption or objection on the part of the owners of such lands for twenty consecutive years;

(d) All toll roads or portions thereof which may be purchased by the board of county commissioners of any county from the incorporators or charter holders thereof and thrown open to the public;

(e) All roads over the public domain, whether agricultural or mineral.

Source: L. 1883, p. 251, § 1; G. S. § 2953; L. 1891, p. 302, § 1; L. 1893, p. 435, § 1; R. S. 08, § 5787; L. 21, p. 380, § 1; C.L. § 1243; CSA, C. 143, § 1; CRS 53, 120-1-1; C.R.S. 1963, § 120-1-1.

- I. General Consideration.
- II. Dedication to Public Use.
- III. Adverse Possession.
- IV. Toll Roads.
- V. Public Domain.

I. GENERAL CONSIDERATION.

Cross references. As to duty of state highway department to maintain right-of-way fences, see § 35-46-111. As to public highways, see § 43-1-202.

C.J.S. Sec 39 C.J.S., Highways, § 1.

Law reviews. For article, "Eminent Domain in Colorado", see 29 Dicta 313 (1952). For article, "One Year Review of Property", see 40 Den. L. Ctr. J. 181 (1963).

"Highways" and "roads" include footpaths. As a matter of law, "highways" and "roads" as used in this section include footpaths. *Simon v. Pettit*, 651 P.2d 418 (Colo. Ct. App. 1982).

County commissioners have the sole right to authorize and control the use of a highway, including the borrow pit, whether the user be an abutting owner or otherwise. *Lewis v. Lorenz*, 144 Colo. 23, 354 P.2d 1008 (1960).

It is duty of county commissioners to establish and maintain roads. It devolves upon boards of county commissioners, and power to that end is granted by statute, to establish, maintain, and keep public roads open for travel. *Leach v. Manhart*, 96 Colo. 397, 43 P.2d 959 (1935).

County commissioners may intervene in injunction suit by landowner where character of road is in issue. In an action by a landowner to enjoin the use of a road across his property, a board of county commissioners — claiming the road to be a public highway — has a right to intervene to the end that the character of the road may be determined, and the dismissal of such a petition in intervention is error. *Leach v. Manhart*, 96 Colo. 397, 43 P.2d 959 (1935).

Vacation or alteration. The trial court having correctly held that a road as established and maintained is a public highway, neither the county commissioners nor the courts can require it to be vacated or altered except in the manner provided by law. *Vade v. Sickler*, 118 Colo. 236, 195 P.2d 390 (1948).

Applied in *Williams v. Town of Estes Park*, 43 Colo. App. 265, 608 P.2d 810 (1979).

II. DEDICATION TO PUBLIC USE.

Mere use without intent to dedicate is insufficient. Mere proof of the use of land of this character, for a long period of time, by individuals, or even by the public generally, for the purpose of travel, without objection from the owner and without evidence from which an intent to dedicate might be inferred, is not sufficient to give a route so taken the character of a public highway. *Liebert v. People*, 33 Colo. 493, 81 P. 270 (1905). See *Starr v. People*, 17 Colo. 458, 30 P. 64 (1892); *Friel v. People*, 4 Colo. App. 259, 35 P. 676 (1894); *People ex rel. Mayer v. San Luis Valley Land & Cattle Co.*, 90 Colo. 23, 5 P.2d 873 (1931).

And there must be acceptance of dedication. For the establishment of a public way by dedication, acceptance by the public is as essential as appropriation by the owner of the fee. *Burlington & C. R. R. v. Schweikart*, 10 Colo. 178, 14 P. 329 (1887).

But dedication may be implied. Where a road runs through private lands, its dedication as a public highway may be implied: When it is satisfactorily proved that it was the owner's intention to set apart the land occupied as a road to the use of the public as a highway, and that there has been an acceptance by the public of the land for such use. The line of the road must be certain and definite; a general privilege or license by the owner to cross his lands, without reference to any special route, will not suffice; user of the road by the public for a considerable length of time without objection by the owner of the land may increase the weight of the evidence, if any there be, arising from acts or declarations of the owner indicating his intent to dedicate; but mere user, without such acts or declarations, unless for a period of time corresponding to the statutory limitation of real actions, cannot be held sufficient to vest the easement in the public, as by prescription. *Starr v. People*, 17 Colo. 458, 30 P. 64 (1892).

III. ADVERSE POSSESSION.

This section is a codification of the common-law method by which the public can obtain title by adverse use. *Mahnke v. Coughenour*, 170 Colo. 61, 458 P.2d 747 (1969).

Under this section all roads over private lands used adversely without interruption for 20 consecutive years are declared to be public highways. *Town of Silver Plume v. Hudson*, 151 Colo. 394, 380 P.2d 59 (1963).

Elements of adverse use of roads over private land. The uses, necessary to give a road the character of a public highway, under this section, must have been adverse, that is, under a claim of right; the line of road must have

been reasonably definite and certain; there must have been an unqualified intention to set apart a line for the road, and the use must have been more than mere permissive use. *Liebert v. People*, 33 Colo. 493, 81 P. 270 (1905). See *Starr v. People*, 17 Colo. 458, 30 P. 64 (1892). See also, *Olson v. People*, 56 Colo. 199, 139 P. 21 (1914).

Land must be used by public with owner's knowledge, adversely and continuously. A highway may exist by prescription, but to establish such a highway the land in question must have been used by the public with the actual or implied knowledge of the landowner, adversely under claim of color of right — not merely by the owner's permission — and continuously and uninterruptedly for the period required to bar an action for the recovery of the possession of land or otherwise prescribed by statute. *People ex rel. Mayer v. San Luis Valley Land & Cattle Co.*, 90 Colo. 23, 5 P.2d 873 (1931).

In order to establish a public highway by means of adverse user, a road must have been adversely used in an uninterrupted fashion by the public under a claim of right for the applicable period of limitations with the actual or implied knowledge of the landowner across whose property the roadway runs. *Board of County Comm'rs v. Ogburn*, 38 Colo. App. 212, 554 P.2d 700 (1976).

The very essence of adverse possession is that the possession must be hostile, not only against the true owner, but against the world as well. *Town of Silver Plume v. Hudson*, 151 Colo. 394, 380 P.2d 59 (1963).

Adverse claim must be hostile at its inception, because, if the original entry is not openly hostile or adverse, it does not become so, and the statute does not begin to run as against a rightful owner until the adverse claimant discovers a holding by permission. *Town of Silver Plume v. Hudson*, 151 Colo. 394, 380 P.2d 59 (1963).

User must be confined to a definite and specific line. The public cannot acquire a prescriptive right to pass over a tract of land generally; in order to create a highway by prescription, the user must be confined to a definite and specific line or way. This is especially true where the locus in quo consists of wild or unenclosed lands. However, it is not indispensable that there shall be no deviation from a direct line of travel or that all vehicles that traverse the road shall follow exactly the same route or traverse the road in exactly the same rut. Slight variations in the line of travel are not fatal; it is sufficient that the travel has been confined to substantially the same line. *Starr v. People*, 17 Colo. 458, 30 P. 64 (1892); *Liebert v. People*, 33 Colo. 493, 81 P. 270 (1905); *Sprague v. Stead*, 56 Colo. 538, 139 P. 544

(1914); *Shively v. Board of County Comm'rs*, 159 Colo. 353, 411 P.2d 782 (1966).

Passageways by prescription, whether public or private, are confined to the extent of actual adverse usage. *Board of County Comm'rs v. Ogburn*, 38 Colo. App. 212, 554 P.2d 700 (1976).

Owner must intend to set apart land for public use. Among criteria to establish a public highway by prescription are acts by the owner which evidence an intent to set apart the land for public use as a road, or such conduct on his part as would estop him from denying such intention. *Boulder Medical Arts, Inc. v. Waldron*, 31 Colo. App. 215, 500 P.2d 170 (1972).

"Permissive use" requires more than failure to interrupt or object. Failure to interrupt or object to public use of an alleyway for over 20 years cannot, without more, be equated to permissive use, since statute requires that the use be both adverse and without objection. *Boulder Medical Arts, Inc. v. Waldron*, 31 Colo. App. 215, 500 P.2d 170 (1972).

Presumption of adverse use after prescribed period of time. When testing the sufficiency of the evidence to support a finding of title by prescription the party asserting the same is aided by a presumption that the character of the use is adverse where such use is shown to have been made for a prescribed period of time. The rule is no different with respect to presumptive rights gained by the public under this section. *Shively v. Board of County Comm'rs*, 159 Colo. 353, 411 P.2d 782 (1966); *Boulder Medical Arts, Inc. v. Waldron*, 31 Colo. App. 215, 500 P.2d 170 (1972).

Presumption of adverse use inapplicable where land vacant, unenclosed, and unoccupied: Where the land involved is vacant, unenclosed, and unoccupied, the presumption that the use is adverse where the use is shown to have been made for a prescribed period of time is not applicable. *Simon v. Pettit*, 651 P.2d 418 (Colo. Ct. App. 1982).

The trial court must set forth in its decree a definite and certain description of the prescriptive way so that there can be no possible doubt as to its location and width. *Board of County Comm'rs v. Ogburn*, 38 Colo. App. 212, 554 P.2d 700 (1976).

Both the width of the roadway and the extent of permissible public use must be limited in the decree to that established by the public use. This requirement is not unduly restrictive. *Board of County Comm'rs v. Ogburn*, 38 Colo. App. 212, 554 P.2d 700 (1976).

Oral statement as to limit on use of road not sufficient. Oral statement made by the trial court during the hearing on the motion for new

trial, that the use of the road be limited to prior usage, was insufficient in that this language did not specifically detail the extent and width of the public easement acquired, even had such limitation appeared in the court's written decree. *Board of County Comm'rs v. Ogburn*, 38 Colo. App. 212, 554 P.2d 700 (1976).

Obstruction as prevention of acquisition of public highway by prescription. Where section line road between plaintiff's land and highway was obstructed by wire gates, obliging persons using the roadway to open and close them, such gates prevented the acquiring or establishing of a public highway by prescription. *Martino v. Fleenor*, 148 Colo. 136, 365 P.2d 247 (1961).

Where a gate which blocked a road, which was sought to be declared a public road by adverse use, was close to defendants' property and there are no intervening properties between it and plaintiffs' land asserting the prescriptive right, the existence of the gate was properly considered as evidence that the road was blocked and that the prescriptive time was interrupted. *Lang v. Jones*, 36 Colo. App. 29, 535 P.2d 242 (1975), *aff'd*, 191 Colo. 313, 552 P.2d 497 (1976).

The use of a road is not adverse where free travel along the road is obstructed by gates across the road, even though they are not locked. The use of a road under such conditions is permissive. *Lang v. Jones*, 191 Colo. 313, 552 P.2d 497 (1976).

The mere existence of gates across roadways during the prescriptive period was not conclusive that the public's use was of a permissive nature or that it lacked the necessary continuity. *Board of County Comm'rs v. Ogburn*, 38 Colo. App. 212, 554 P.2d 700 (1976).

The board of county commissioners in relying upon adverse use of private lands for road purposes has the burden of proving such usage by clear and convincing testimony. *Board of County Comm'rs v. Masden*, 153 Colo. 530, 387 P.2d 601 (1963).

Where evidence discloses that a roadway across lands has been used by a plaintiff as a public roadway for more than 40 years, a finding and judgment under this section that a public road has been established is not erroneous. *Brown v. Jolley*, 153 Colo. 530, 387 P.2d 278 (1963).

Issuance of tax deeds does not negate adverse use prior to issuance. Where the adverse use of a public highway by a town continued uninterrupted for more than the required period of time to establish a prescriptive right therein, the issuance of tax deeds based upon tax sales prior to beginning of the public use does not wipe out prescriptive right of public based upon adverse use of land prior to issuance of

tax deeds, Town of Silver Plume v. Hudson, 151 Colo. 394, 380 P.2d 59 (1963).

Consent to adverse use by nonowner does not negate such use. Where real property is sold for taxes and a certificate is issued to a county and thereafter a town establishes and maintains a public highway over part thereof and the county consents to such use, such consent does not negate adverse use since the holder of the tax certificate is not the "owner" of the property. Town of Silver Plume v. Hudson, 151 Colo. 394, 380 P.2d 59 (1963).

"Public alleyway". Where owner's intention was to set a 10-foot strip of land aside as a public alleyway, and the city, in recognition thereof, made an alley cut in the curbing and

also helped to keep it clean, and the public used the alleyway for 20 years, it became a "public alleyway", and an injunction was properly granted against blocking thereof. Christianson v. Cecil, 109 Colo. 510, 127 P.2d 325 (1942).

IV. TOLL ROADS.

Cross references. As to toll roads, see § 43-3-301 et seq.

V. PUBLIC DOMAIN.

The term "public domain" includes school land. Martino v. Board of County Comm'rs, 146 Colo. 143, 360 P.2d 804 (1961).

43-2-201.1. Closure of public highways extending to public lands - penalty. (1) Any person, other than a governing body of a municipality or county acting pursuant to part 3 of this article, who intentionally blocks, obstructs, or closes any public highway, as described in section 43-2-201, which extends to any public land, including public land belonging to the federal government, thereby closing public access to public lands, without good cause therefor, commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

(2) The provisions of this section shall not apply to temporary and reasonable obstruction of the public highways described in subsection (1) of this section by a railroad train at a railroad crossing.

(3) Any peace officer of this state, as defined in section 18-1-901 (3) (I), C.R.S., has the authority to enforce the provisions of this section.

(4) (a) Notwithstanding the provisions of subsection (1) of this section, any owner of private land who complies with the provisions of this subsection (4) may post notice of intent to close a road crossing such land if such road has been abandoned. Said owner shall promptly notify the board of county commissioners of the county in which such road is located of such proposed closure. The board of county commissioners so notified shall publish notice of such proposed closure in a newspaper of general circulation in such county within sixty days after receipt of notice from said owner and shall post notice of such proposed closure at each end of the road described in the notice. If the board of county commissioners receives no objection to such proposed closure within eighteen months after such publication, the road described in such notice shall be closed to public access.

(b) If the board of county commissioners receives objection to such proposed closure, it shall schedule a public hearing concerning the proposed closure and shall publish notice of said hearing in a newspaper of general circulation in such county at least ten days prior to said hearing. At said hearing, the board shall hear objections to the proposed closure and shall decide, within thirty days of the hearing, whether the road described in the notice shall be closed to public access.

Source: L. 76, p. 821, § 1.

43-2-202. County road and bridge fund - apportionment to municipalities. (1) A fund to be known as the "county road and bridge fund" is created

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at **Denver, Colorado,** has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of **Marcelino Chavez** has been established and duly consummated, in conformity to law, for the Tract thirty-eight in Township four south of Range eighty-seven west of the Sixth Principal Meridian, Colorado, containing six hundred forty acres.

according to the Official Plat of the Survey of the said Land, on file in the GENERAL LAND OFFICE.

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described, and to the heirs and assigns of the said claimant forever, subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States. Also excepting from this conveyance that certain Forest Service trail constructed by the United States through, over, or upon the land herein described, and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same, so long as needed or used for or by the United States.

IN TESTIMONY WHEREOF, **Franklin D. Roosevelt,**

President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office is hereunto affixed.

GIVEN under my hand, at the City of Washington, the **EIGHTEENTH**

(SEAL)

day of **OCTOBER** in the year of our Lord one thousand nine hundred and **THIRTY-NINE** and of the Independence of the United States the one hundred and **SIXTY-FOURTH**

By the President:

By

Franklin D. Roosevelt
Joanna Swaneght Secretary.
A. B. Clinton

[illegible]

ILLUSTRATION 3

1892 Survey
T. 5 S., R. 90 W.

A-6

ILLUSTRATION 3

1892 Survey
T. 15 S., R. 90 W.

A-6

ILLUSTRATION 3

1892 Survey
T. 15 S., R. 90 W.

A-6

ILLUSTRATION 3

1892 Survey
T. 15 S., R. 90 W.

A-6

692

T. 5 S. R. 90 W.

693

T. 5 S. R. 90 W.

to Sec. 17, 18, 19 and 20
ed with sandstone on S. and
5 miles on E. edge and
raised a mound of stone
14 ft. high 2 ft. base along
E. impracticable.
Land - mountainous
soil - 3rd rate.
Timber - scrub oak and
service bush.

S. 27° 50' E. on random line.
bet. Sec. 17 and 20.
Ca. 15° 30' E.

40.00 Set temporary 1/4 Sec. cor.
50.12 Intersect the N. and S. line
14' E. of S. of cor. to Sec.
16, 17, 20 and 21.
Thence I run

39.00

40.00

42.00

43.60

46.00

to Sec. 17, 18, 19 and 20
ed with sandstone on S. and
5 miles on E. edge and
raised a mound of stone
14 ft. high 2 ft. base along
E. impracticable.

Sec. 17, 18, 19 and 20.
Ca. 15° 30' E.
Secured over sage bush
road.

Sec. 17, 18, 19 and 20.
Secured over sage bush
road. rocky bluff corner N. 90° on
S. E. ...

Set a sandstone 25 x 14 x 12 in.
line in the ground sur-
rounded by stone for 1/4
Sec. cor. marked 1/4 on N.
face and raised a mound
of stone 14 ft high 2 ft. base
alongside. E. impracticable
bulb corner S. 10° W.

Wagon road corner N. and S.
Secured through sage bush.
Secured steep mountain

1892 Survey
T. 5 S., R. 90 W.

Township No.

Range No.

District of

SECTION	DESCRIPTION OF TRACT	CONTENTS				NAME OF THE PURCHASER			
		Acres	100s.	50s.	20s.	10s.	5s.	2s.	1s.
19	5	90	100	50	20	10	5	2	1
20	5	90	100	50	20	10	5	2	1
21	5	90	100	50	20	10	5	2	1
22	5	90	100	50	20	10	5	2	1
23	5	90	100	50	20	10	5	2	1
24	5	90	100	50	20	10	5	2	1
25	5	90	100	50	20	10	5	2	1
26	5	90	100	50	20	10	5	2	1
27	5	90	100	50	20	10	5	2	1
28	5	90	100	50	20	10	5	2	1
29	5	90	100	50	20	10	5	2	1
30	5	90	100	50	20	10	5	2	1
31	5	90	100	50	20	10	5	2	1
32	5	90	100	50	20	10	5	2	1
33	5	90	100	50	20	10	5	2	1
34	5	90	100	50	20	10	5	2	1
35	5	90	100	50	20	10	5	2	1
36	5	90	100	50	20	10	5	2	1
37	5	90	100	50	20	10	5	2	1
38	5	90	100	50	20	10	5	2	1
39	5	90	100	50	20	10	5	2	1
40	5	90	100	50	20	10	5	2	1
41	5	90	100	50	20	10	5	2	1
42	5	90	100	50	20	10	5	2	1
43	5	90	100	50	20	10	5	2	1
44	5	90	100	50	20	10	5	2	1
45	5	90	100	50	20	10	5	2	1
46	5	90	100	50	20	10	5	2	1
47	5	90	100	50	20	10	5	2	1
48	5	90	100	50	20	10	5	2	1
49	5	90	100	50	20	10	5	2	1
50	5	90	100	50	20	10	5	2	1
51	5	90	100	50	20	10	5	2	1
52	5	90	100	50	20	10	5	2	1
53	5	90	100	50	20	10	5	2	1
54	5	90	100	50	20	10	5	2	1
55	5	90	100	50	20	10	5	2	1
56	5	90	100	50	20	10	5	2	1
57	5	90	100	50	20	10	5	2	1
58	5	90	100	50	20	10	5	2	1
59	5	90	100	50	20	10	5	2	1
60	5	90	100	50	20	10	5	2	1
61	5	90	100	50	20	10	5	2	1
62	5	90	100	50	20	10	5	2	1
63	5	90	100	50	20	10	5	2	1
64	5	90	100	50	20	10	5	2	1
65	5	90	100	50	20	10	5	2	1
66	5	90	100	50	20	10	5	2	1
67	5	90	100	50	20	10	5	2	1
68	5	90	100	50	20	10	5	2	1
69	5	90	100	50	20	10	5	2	1
70	5	90	100	50	20	10	5	2	1

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ILLUSTRATION 4

DATE OF SALE	NAME OF PURCHASER	DATE OF PATENT	WHERE ACQUIRED
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24. 1. 1875
25. 1. 1875
26. 1. 1875
27. 1. 1875
28. 1. 1875
29. 1. 1875
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Recorded at 10³⁴ o'clock A.M. FEB 15 1989
 Reception No. 299017 Michael O'Leary Recorder.

BOOK 749 PAGE 100

WARRANTY DEED

THIS DEED, Made this 15th day of February

19 89, between Leo Payne

of the *Country of Jefferson
 State of Colorado, grantor, and W H I, Inc.

a corporation organized and

existing under and by virtue of the laws of the State of Georgia
 Drive, Norcross, Georgia 30071

grantee: whose legal address is 5986 Financial

RECEIVED
 FEB 15 1989
 State Doc. Fee
 \$ 297.95

loc fee
 \$297.95

WITNESSETH, That the grantor, for and in consideration of the sum of Two Million Nine Hundred Seventy Nine Thousand Four Hundred Ninety Six and 95/100 (\$2,979,496.95) DOLLARS, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto the grantee, its successors and assigns forever, all of the real property, together with improvements, if any, situate, lying and being in the County of Garfield and State of Colorado, described as follows:
 See legal description contained in Exhibit A attached hereto and incorporated herein by this reference.

also known by street and number as: Bear Willow Ranch, 1877-137 Road, Glenwood Springs, Colorado 81601

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the grantee, its successors and assigns forever. And the grantor, for himself, his heirs and personal representatives, does covenant, grant, bargain and agree to and with the grantee, its successors and assigns, that at the time of the encoding and delivery of these presents, he is well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, fees, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, except See exceptions to title contained in Exhibit B attached hereto as Exhibit B and incorporated herein by this reference.

The grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.
 The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, The grantor has executed this deed on the date set forth above.

Leo Payne
 Leo Payne

STATE OF COLORADO,
 County of GARFIELD

The foregoing instrument was acknowledged before me this 15th day of February, 1989, by Leo Payne.

My commission expires 5/11/91

WITNESS my hand and official seal.

"If in Denver, insert 'City and'"

Christine A. Holgren
 Notary Public

15880



EXHIBIT A
LEGAL DESCRIPTION

PARCEL 1
TOWNSHIP 5 SOUTH, RANGE 90 WEST OF THE 6TH P.M.

SECTION 2: LOTS 3 AND 4
SECTION 3: LOTS 1 AND 2

PARCEL 2
TOWNSHIP 5 SOUTH, RANGE 90 WEST OF THE 6TH P.M.

SECTION 9: SE1/4, S1/2NE1/4
SECTION 10: SW1/4NW1/4, NW1/4SW1/4
SECTION 15: W1/2SW1/4
SECTION 16: E1/2, E1/2NW1/4, NE1/4SW1/4

PARCEL 3
TOWNSHIP 5 SOUTH, RANGE 90 WEST OF THE 6TH P.M.

SECTION 10: SW1/4NE1/4, N1/2SE1/4, SE1/4SE1/4
SECTION 11: NW1/4SW1/4, S1/2SW1/4
SECTION 14: W1/2E1/2, W1/2
SECTION 15: E1/2NE1/4
SECTION 23: NW1/4, W1/2NE1/4, SE1/4NE1/4, AND
All that portion of NE1/4 NE1/4 Section 23;
AND W1/2NW1/4 of section 24, lying Westerly
of a line 15 feet West of the Westerly line of
the County Highway as the same now extends
through said three forty acre tracts.

COUNTY OF GARFIELD
STATE OF COLORADO

EXHIBIT B
EXCEPTION TO TITLE

1. Real estate taxes for 1989 and subsequent years.
2. The effect of inclusions in any general or specific water conservancy, fire protection, soil conservation or other district or inclusion in any water service or street improvement area.
3. Any and all Rights in and to the public by virtue of the trails or jeep roads, as set forth on the United Forest Service maps and petitions, recorded April 4, 1930 in Road record Book 2 at Page 12 as Reception No. 106786, including, but not limited to, any right asserted by the Bureau of Land Management and/or the Garfield County Commissioners to open said roadway as a public road and any judgment order or decree rendered by the Garfield County District Court, in case No. 89CV04 entitled Board of County Commissioners of Garfield County, Colorado vs. Leo Payne, et al.
4. All existing roads, highways, ditches, utilities, canals, pipelines, powerlines, telephone lines, water lines and rights of way and easements therefor as same may cross subject property.
5. Right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as reserved in United States Patents recorded as follows:

RECORDED	BOOK/PAGE	RECEPTION NO.
April 1, 1901	12/561	23636
April 6, 1907	56/578	33293
6. Right of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patents recorded as follows:

RECORDED	BOOK/PAGE	RECEPTION NO.
April 1, 1901	12/561	23636
April 6, 1907	56/578	33293
March 23, 1911	71/470	41562
June 4, 1914	92/332	49623
August 5, 1915	73/76	52227
August 7, 1922	112/337	79966
February 19, 1924	112/410	86006
December 27, 1928	112/469	103223
January 8, 1929	112/600	103313
November 22, 1935	172/576	122135
7. All the coal and the minerals in the lands so patented, together with the right to prospect for, mine and remove the same according to the act of December 29, 1916 (39 Stat. 862)

as reserved by the United States in the Patent recorded December 27, 1928 in Book 112 at Page 469 as Reception No. 103223. (Effects Section 16: NE1/4, E1/2NW1/4, W1/2SE1/4, NE1/4SW1/4).

8. Maps and Statements of the following Ditches:

NAME	RECEPTION NO.	FILING DATE
The DeWeese Ditch	23764	May 3, 1901
The Dallas Ditch	23765	May 3, 1901
The Baxter Ditches No. 4 & 5	31193	November 3, 1903
The Fawcett Extension and Enlargement of the Baxter Ditch No. 4	38404	December 20, 1909
The DeWeese Ditch Enlargement and Extension	41317	February 15, 1911
The Baxter Spring Branch and Wates Water Ditch	30350	January 26, 1905
First Enlargement of The Lewis Ditch No. 2	209883	June 21, 1960
First Enlargement of The Warner Ditch	209884	June 21, 1960
The Buster Ditch No. 1	209887	June 21, 1960

9. Easement and right of way for the use, operation and maintenance of the Williams Canal, including the access road associated therewith. Provided, that should said easement and right of way cease to be used for said purpose and said canal abandoned that this easement and right of way shall terminate and all rights thereto revert to the owner of the dominant estate, as granted to The Williams Canal Company by Brinkley B. Brown by Document, recorded May 19, 1975 in Book 474 at Page 44 as Reception No. 267628.
10. Easements, rights of way and existing road ways, as reserved by Brinkley B. Brown in the Deed to Charles R. Rittenberry recorded February 1, 1979 in Book 522 at Page 483 as Reception No. 291869, which reads as follows:
 "First Party reserves unto himself, his heirs and assigns all of his right, title and interest in and to, the Coryell Joint Stock Ditch and the water rights underlying the same, together with an easement and right of way, through the lands above described for the continued use, maintenance and other activities necessary to operate said ditch as the same is presently in place and in use. There is also reserved, an easement to use existing roadways on, across and through the above described property, for the purpose of access to the various sections of said Ditch, which roadways may or may not be adjacent to the Ditch, all as may be necessary for the practical access to, and maintenance of said ditch facility."
11. Rights of way for the uninterrupted flow of Bearhollow Creek.
12. Lack of a right of access from the land to any open public road, street or highway as to Sections 2, 3, 9, 15 & 16. Due

to the fact that said Sections are completely bounded by Federal Lands.

13. Oil and Gas Lease between Double Eagle Land and Cattle Company, an Oklahoma Corporation and Lawrence N. Wert, recorded October 30, 1985 in Book 677 at Page 965 as Reception No. 366126, and any and all assignments thereof, or interests therein.

LOCATOR KEY=40215010806045031060050533904

STATUS TABULAR REPORT
PRINCIPAL MERIDIAN - 12 5TH PRINCIPAL MERIDIAN
REGION - 02 ROCKY MOUNTAIN
ADMIN - 10 ADIT RIVER NF
TERR - 0100 R-TTS RIVER NF
STATE - 01 COLORADO

DATE PRINTED 2/ 2/88
TOWNSHIP - 5.C SOUTH
RANGE - 89.C WEST

COUNTY - 045 GARFIELD
CONG. DIST. - 03
ANGR. DIST. - 05 RIFLE RD

INDEX KEY
TO REC SECT LINE
NO NO NO NO NO

OWNERSHIP	UNIT	PL	PA-565	PAYMENT	ACTION	DATE
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OWNERSHIP	UNIT	PL	PA-565	PAYMENT	ACTION	DATE
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OWNERSHIP	UNIT	PL	PA-565	PAYMENT	ACTION	DATE
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COUNTY REPORT OF EAGLE (037)												
JAD NO	SEQ NO	LOCATION	DESCRIPTION			SECT LEN	SURF TYPE	SURF WID	NUM OF LANES	SYS JUR SPLT	COND DATA	YEAR OF UPDATE
	10	25 30S 870W	5	SHEEP CR RD-CR 40 TO PG	NORTHEAST	1.11	2	9	1	9	F	76
A	10	24 30S 870W	5A	E.FK SHEEP CR RD-CR 5 TO END	SOUTHEAST	2.74	2	8	1	9	F	76
J	10	7 40S 850W	50	TRAIL GLCH RD 1-CR51 TO SYMCH	EAST	2.10	2	0	1	2	FP	76
J	20	8 40S 850W	50	TRAIL GLCH RD 1-SYMCH TO END	NORTHEAST	4.32	2	10	1	9	FP	76
JA	10	27 40S 860W	50A	TRAIL GLCH RD 2-BGN TO SRFCH	NORTHEAST	1.06	1	10	1	9	FP	76
JA	20	27 40S 860W	50A	TRAIL GLCH RD 2-SRFCH TO CR51	NORTHEAST	4.25	3	0	1	2	FP	76
JB	10	26 40S 860W	50B	TRAIL GLCH RD 3-CR50A TO END	EAST	1.61	2	14	2	9	FP	76
JC	10	24 40S 860W	50C	TRAIL GLCH RD 4-CR50A TO END	EAST	1.33	2	14	2	9	FP	76
JD	10	22 40S 860W	50D	TRAIL GLCH RD 5-BGN TO CR50A	NORTHEAST	2.71	2	10	1	9	FP	76
JE	10	0 80S 830W	50E	BURNT MT RD-COL1 TO CR 83	NORTH	6.30	3	18	2	2	FP	76
A-17	1	5 50S 850W	51	TRAIL GULCH ROAD	NORTHWEST	0.00	2	0	2	2	FP	76
	10	5 50S 850W	51	CL GYPSUM TO CR 50A	NORTHWEST	4.35	3	18	2	2	FP	80
	20	19 40S 850W	51	CR 50A TO SRFCH	NORTH	1.91	3	21	2	2	FP	76
	30	7 40S 850W	51	SRFCH TO CR 301	NORTHWEST	3.83	1	17	1	9	FP	76
A	10	19 40S 850W	51A	TRAIL GLCH RD 6-CR51 TO CR50	NORTH	4.04	2	14	2	9	FP	76
2	10	17 70S 830W	512	JAKEMAN CR RD-CR 307 TO END	NORTH	2.58	2	10	1	9	FP	76
J	10	26 40S 840W	53	LLOYD RANCH RD 1-70 TO STR	SOUTH	0.10	4	10	1	9	F	76
J	20	26 40S 840W		STR		0.00	4	0	1	9	F	76
J	30	26 40S 840W	53	LLOYD RANCH RD-STR TO END	SOUTH	0.55	4	10	1	9	F	76
J	10	25 30S 840W	54	HORSE MTN RD-END TO SYMCH	SOUTHEAST	0.85	2	12	1	9	FP	76
J	20	30 30S 830W	54	HORSE MTN RD-SYMCH TO CR 4	SOUTHEAST	2.75	2	16	2	2	FP	76
J	30	32 30S 830W	54	HORSE MTN RD-CR 4 TO SH 131	EAST	1.66	3	18	2	2	FP	76
IA	10	9 40S 830W	54A	RED MTN RD-BGN TO SH 131	EAST	1.84	1	10	1	9	F	76
J	10	18 40S 830W	55	HELLS POCKET-SH6 TO RRX	NORTH	0.08	4	16	2	2	FP	76
J	20	18 40S 830W		RRX		0.00	4	0	2	2	FP	76

ROAD PETITION.

To the Honorable Board of County Commissioners of Garfield County, Colo.

GENTLEMEN:—We, the undersigned, Citizens of your County, respectfully represent that the necessities of the public require a County wagon road to be laid out as follows, to-wit: Commencing at a point on the County road, at near what is known as Baxters gate, in Section 24, T. 5

S. R. 30, N. 6th P. M. and running thence in an easterly course through the

land adjoining the East boundary of what is known as the Jackson land, and
 thence across said Jackson land to and onto the corner of
 said land and the lands of said Jackson.

Jeff Boland

SW. 1/4 (1st 4)

and 2nd 1 - Sec. 18 T. 5 S. R. 30 W.

Lot 344 - " 13 T. 5 S. R. 30 W.

E 1/2 Sec 1/4 Sec 13 T. 5 S. R. 30 W.

Annie M. Scott

1/4 NW 1/4 Sec 25 - 5 S. 20 W.

1/4 NW 1/4 Sec 19 5 S. 20 W.

1/4 NW 1/4 " 18 5 S. 36 W.

Harriet J. Johnson

NW 1/4 Sec 14

NW 1/4 Sec 14 } Sec 18 - T. 5 S. R. 30 W.

E 1/2 Sec 14

Andrew Johnson

E 1/4 NW Sec 18 - T. 5 S. R. 30 W.

Said road to be no

We therefore

and we, the own

one dollar to us each and severally in hand paid by u

the receipt of which is hereby acknowledged, and of

the right of way through our lands as shown by the

damage by reason thereof.

in County of Garfield

day A-19 nd opening of said road, hereby agree to give

accompanying this petition, and relinquish all claims for

as above described,
 tion of the sum of

Said road to be not less than sixty (60) feet in width.

We therefore petition your honorable body to cause to be laid out and opened a County road as above described, and we, the owners of the land through which said road is sought to be laid out, in consideration of the sum of one dollar to us each and severally in hand paid by the said County of Garfield, the receipt of which is hereby acknowledged, and of the laying out and opening of said road, hereby agree to give the right of way through our lands as shown by the plat accompanying this petition, and relinquish all claims for damage by reason thereof.

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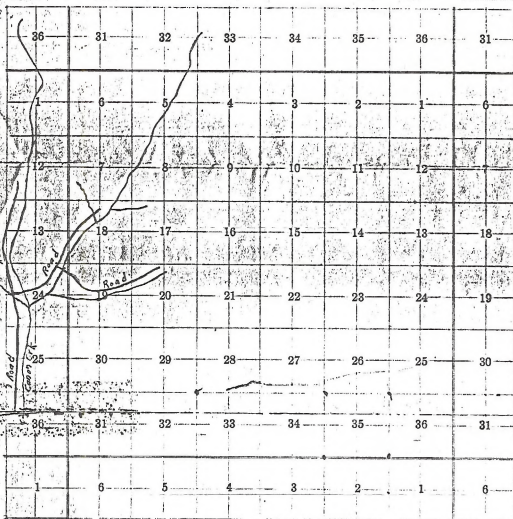
As witness our signatures hereunto annexed, and followed by a description of our land this

day of 10

SIGNATURES	PROPERTY OWNED
<i>James Ross</i>	
<i>Chas. L. Coy.</i>	
<i>Wm. Bert T. J. Jr.</i>	
<i>Peter Mattson</i>	
<i>Rev. W. W. Winton</i>	
<i>Boys Smith</i>	
<i>Blanch D. Ketter</i>	
<i>J. C. Sparks</i> ✓ <i>not for sale</i>	
<i>W. J. Smith</i> ✓ <i>not for sale</i>	
<i>W. J. Garrison</i>	
<i>A. S. Lippitt</i>	
<i>H. C. Josselyn</i>	
<i>Ac. Hendri</i>	
<i>A. S. Baxter</i>	
<i>Albert Anderson</i>	

The said proposed line of road is more fully shown by the following map or plat to which reference is herein made, the same being in

TOWNSHIP 5th P. R. 8th and 9th NORTH RANGE 20 WEST 6 P.M.



As witness our signatures hereunto annexed, and followed by a description of our land this

day of 19

SIGNATURES

PROPERTY OWNED

SECTION

Sec. Tp.

RANGE

Geo. L. cy.
Mrs. Bert DePette
Peter Martin
Rep. W. Wolverson
Roger Smith
Blanch, Tibbitts
J. C. Sparks

A-21

Not for sale

ROAD-VIEWERS' REPORT.

To the Honorable Board of County Commissioners of CARROLL County, Colorado:

GENTLEMEN:

Your Viewers appointed on the 9 day of JULY 1912 to view a County Road prayed for in a certain petition presented to your honorable body on the above named day and date, a copy of which has been received by us, viz.: Commencing at

a point on the County road, at near what is known as Baxter's gate, in Section 24, T. 5 S. R. 90. W. 6th P. M. and running thence in an easterly course through the lands of Anna M. Scott; Joseph Roland; A. J. Keyser, and onto Government land, adjoining the East boundary of what is known as the Jackson land, and thence across said Jackson's land to and onto Government land beyond the lands of said Jackson.

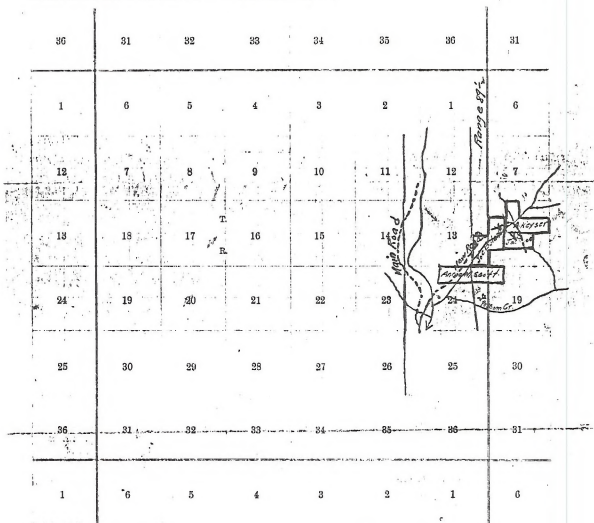
Respectfully submit the following report, to-wit: After receiving our authority to act, we met at the starting point of said proposed road, on the 20th day of July 1912 at the hour of 12 o'clock A. M., being the time and place specified in our appointment, and proceeded to view the road prayed for in said petition, as follows: We commenced at the starting point named in said petition, ~~and~~

to wit Baxter's gate near the center of Sec. 24 T. 5 S. R. 90 W. and run in a north westerly direction through the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and Sec. 24 belonging to Mrs. Annie M. Scott and through Lots 3 and 4 Sec. 13 T. 5 S. R. 89 $\frac{1}{2}$ W. and lots 1 and 4 Sec. 18, T. 5 S. R. 89 W. belonging to Joe Roland and through the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 18 T. 5 S. R. 89 W. belonging to A. Keyser and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 18, T. 5 S. R. 89 W. belonging to Geo. F. Jackson

The last named point being the terminus thereof, and the road as above laid out and viewed being over the most practicable route which we, in our judgment, can find. We found it necessary to make the following changes in the proposed route as prayed for, viz:

At the starting point we threw the road about 150 feet south for a distance of about 400 feet.

We have caused to be surveyed and platted, and have herein embodied a plat of said road as viewed by us, and which forms a part of this report as shown by the following map:



We have taken into account all the damages and benefits to land owners arising from the laying out of said road and report, in tabular form, as follows:

NAME OF LAND OWNER.	DESCRIPTION OF LAND.						Damages, or value of land taken.	Damages to residue of land and other property.	Value of the Benefits.	Amount of Damages in excess of Benefits.
	Part or width of strip taken.	Subdivision.	Sec.	T. p.	Range.	No. acres taken.				
Annis M. Scott	60 ft. wide	76 1/2	27	58	90 W. S. 203					
" " "	"	76 1/2	24	55	90 W					
Joe Roland	"	114 1/4	18	55	87 W 2					
" " "	"	54 1/4	13	55	87 W 1/2					
A. Keyser	"	114 1/4	18	55	87 W 2.13					
Geo. Jackson	"	114 1/4	18	55	87 W 2.13					

We think these are the correct subdivisions. If there are any changes to be made in descriptions, this report will be amended after survey has been made.

Rose E. Roland 60 ft. wide 76 1/2 A-24 90 W. 271
 S. C. L. Elder " " 58 1/4 114 1/4 24.55 90 W. 189

J. J. Boland

5 1/2 S 5 1/4 13 5 1/2 7 0 0 1 1/4

We have taken the following Government Lands, viz: Sections of A. 2 Sec. 13, T. 55 R. 9 1/2 W.
and of the N 2 1/4 N 8 1/4 Sec. 18, T. 55 R. 9 1/2 W.

We have taken the following Railroad Grant Lands, viz:

We have marked out the line of said road as located by us by ^{setting stakes at the angle points of the}
^{center line} ~~turning a furrow on each side of said proposed road.~~
We estimate the probable cost of opening said road to travel to be \$ 7.50.00

The viewers find that no damage has been
done to anyone and that the benefits
derived by the use of said viewed road will
more than off set any damage.

Which viewing we have completed this 20th day of July - 19 18

H. G. J. J. J.
W. H. G. J. J.
O. H. J. J.

} Viewers.

Monday August 2, 1920.

The Board met in regular session at 10 o'clock A. M. all members being present.

The minutes of the previous meeting were read and adopted as read.

The Board adjourned at 5 o'clock P. M. until Tuesday August 3rd at 10 o'clock A.M.

Tuesday August 3, 1920.

The Board met at 10 o'clock A.M. all members being present.

The day was spent in auditing and allowing claims against the County.

Adjournment was taken at 5 o'clock P. M. until Wednesday August 4th at 10 o'clock A. M.

Wednesday August 4, 1920.

The Board met at 10 o'clock A. M. All members being present.

The Board spent the day in auditing and allowing claims against the County.

Adjournment was taken at 5 o'clock P. M. Thursday August 5th at 10 o'clock A. M.

Thursday August 5, 1920.

The Board met at 10 o'clock A. M. All members being present.

Adjournment was taken at 11 o'clock ^{for the purpose of this work,} making a trip to Rifle to inspect the roads in that vicinity.

Friday August 6, 1920.

The Board met at 10 o'clock A. M. All members being present.

The following resolution was unanimously adopted.

Resolution

The report of the Viewers heretofore appointed to view a County road designated as the Canon Creek Road, coming up for final action by the Board of County Commissioners Garfield County, Colorado; on motion of Commissioner John P. McCoy, seconded by Commissioner George F. Newton, the following resolution was unanimously adopted.

Whereas, a petition, signed by more than ten freeholders residing within two miles of the proposed road hereinafter described, was presented to the Board of County Commissioners of said Garfield County, asking that said board cause to be laid out and opened a County road, described in said petition, and that upon the presentation of said petition to said board on the 9th day of July, 1916, said board appointed as viewers, to view said proposed road, H. C. Jessup, A. C. Hendricks and W. H. Emery.

And whereas, the above named viewers made and caused to be filed in the office of the County Clerk of said Garfield County, their report of their view of said proposed road on July 27th, 1916, and it appearing to said board of County Commissioners, that said report of said viewers is regular, full and complete and all objections heretofore filed, or presented to said board, to the approval of said report having heretofore been disposed of; therefore, resolved by the Board of County Commissioners of said Garfield County, that the report of said viewers of said Canon Creek Road, be and the same hereby is approved, and that said Canon Creek road, heretofore petitioned for and viewed by said viewers be and the same hereby is declared to be a County road, or public highway, for public travel, and that the same be, and hereby is ordered to be opened up to public travel, through the following described lands, to-wit: Commencing at Barbers gate near the center of Section 24, T. 5 S. R. 90 W., and running thence in a north-easterly direction through the NW 1/4 E24 and SW 1/4 E24 section 24, belonging to Mrs. Annie M. Scott, and through Lots 5 and 4 section 15, T. 5 S. R. 89 W., and Lots 1 and 4, Section 16, T. 5 S. R. 89 W., belonging to Joe Boland, and through the SW 1/4 E24 section 16, T. 5 S. R. 89 W., belonging to A. J. Keyser, and the NW 1/4 E24 section 16, T. 5 S. R. 89 W., belonging to George F. Jackson; the right of way for said road being 60 feet in width the same being surveyed and a plat thereof filed in the office of the Clerk and Recorder of said Garfield County. It is further ordered that the Clerk of said County notify all persons through whose lands said road runs, of the order of opening of said Road.

The Rittmayer Edw. Co. notified the Board that their Warrant for \$11.80 on the Highway Fund had in so manner become lost or destroyed and they wished a duplicate warrant issued.

They were required to give an Identifying Bond for twice the amount of the lost warrant. They presented a Bond signed by Rittmayer Edw. Co. a principal and Barbara E. Walter and Edw. Rittmayer as co-reties. The Bond being approved the Clerk was instructed to draw a duplicate warrant on the Highway Fund for the amount of \$11.80 namely Highway warrant #1427.

The balance of the day was spent by the Board auditing claims.

Adjournment was taken at 5 A-26

No. 72697

Quit Claim Deed

Know all Men by these Presents, That I, Andrew J. Kuper
 of the County of Barfield and State of Colorado, for the consideration of one dollar and no part
 and good and sufficient consideration, Do hereby sell and convey unto
The Board of County Commissioners of the County of Barfield and the State of Colorado, the following real property situated in the County
 of Barfield and State of Colorado, to-wit:

That of that portion of the E 1/2 of the N 1/4 of Section
 18, Township 5, South, Range 59 west 6th, P.M. contained
 within 30 feet on each side of the center line of a 60 feet
 wide right of way for a road, beginning at a point
 on said center line, to hence the 1/4 corner on the west line of
 said section 18, bear south 48° 14' west, 1715 feet;
 thence a long said center line, N. 67. 27. E. 198. 5 feet;
 thence N. 70. 39. E. 390. 8 feet; thence N. 66. 52. E. 169. 45 feet;
 thence N. 64. 51. E. 7. 32 feet; thence N. 32. 27. E. 246. 77 feet;
 thence N. 61. 51. E. 418. 96 feet; thence S. 68. 31. E. 67. 76 feet;
 thence N. 75. 14. E. 196. 35 feet; thence N. 53. 08. E. 145. 7 feet;
 thence N. 64. 10. E. 150. 35 feet; thence S. 40. 37. E. 219. 92
 feet; thence S. 5. 59. E. 162. 36 feet; thence S. 39. 19. W.
 176. 66 feet; thence S. 37. 36. W. 439. 89 feet; thence
 S. 32. 40. W. 272. 83 feet; thence S. 29. 56. W. 67. 76 feet;
 thence N. 80. 27. E. 315. 45 feet; thence N. 65. 07. E.
 156. 02 feet; thence N. 68. 07. E. 307. 84 feet; thence
 S. 31. 58. W. 479. 39 feet; thence S. 25. 47. W. 195. 62 feet;
 thence S. 46. 42. W. 210. 15 feet; thence S. 20. 31. W.
 301. 46 feet; to hence a stake set for the center of
 said Section 18, bear S. 13. 09. W. 245. 06 feet;
 thence again along said center line S. 18. 54. W. 300 feet,
 as the same is shown on the map of said road
 on file in the office of the County Clerk and Recorder
 of Barfield County, Colorado, containing 2.13 acres.

with all its appurtenances and accretions thereto to the same.

Signed and delivered this _____ day of July, A. D. 1922
Andrew J. Kuper
 In the Presence of _____

STATE OF COLORADO
 County of Barfield
 said Barfield County, in the State aforesaid, do hereby certify that

1. Charles J. Frost, County Clerk of Barfield, is and for
 said Barfield County, in the State aforesaid, do hereby certify that Andrew J. Kuper
 who personally known to me to be the person whose name is subscribed to the foregoing deed,
 and acknowledged that he signed, sealed and delivered the said instrument
 appeared before me A-27
 of writing on the _____ day of October, A. D. 1922.
 Given under my hand and official seal, this _____ day of _____, A. D. 19____

(SEAL)

694 Colo.

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which motion was granted. Thereupon plaintiffs filed a sixty page complaint in which is set forth the separate claims of the plaintiffs, all based on the allegations of the original complaint, Jernigan, Payne, Drew and Maddox dividing their separate demands against the three defendants into nine separate claims; and the other plaintiffs dividing their demands into six separate claims. This amended complaint alleged the acts of the defendant were "contrary to the provisions of the statute in such case provided," and demanded judgment for \$500 for each refusal of access to the pool against each of the defendants.

To this amended complaint defendants moved "that each and every allegation of the several claims of the several plaintiffs, save and except paragraphs 1, 2, 3, 4, 5 and 6 of the first claim of Opal Doris Jernigan be stricken from the amended complaint" as redundant, immaterial and impertinent." On presentation of this motion the trial court determined "that the action herein is statutory for the recovery of a penalty, and that the motion is well taken." The trial judge thereupon sustained the motion and these portions of the amended complaint were stricken.

The trial court and counsel apparently overlooked our recent decision in *Western Homes, Inc., v. District Court*, 133 Colo. 304, 296 P.2d 460, where the provisions of our Rule 20(a), Rules of Civil Procedure relating to multiple plaintiffs and defendants in actions involving common questions of law or fact are discussed.

In the order it is stated "to the end and effect that plaintiffs jointly may assert the one claim for the recovery of a single penalty against any one or more of the named defendants." A motion to rehear the matter was denied and plaintiffs bring the case here on writ of error. There the record ends. No answer was ever filed, no trial was had and no judgment of any kind appears in the record.

It is a well settled rule that a writ of error will lie only to a final judgment. Here we have none. Rulings on motions directed

to pleadings which do not result in a final judgment entered of record cannot be made the basis for a writ of error. Accordingly the writ of error is dismissed.

MOORE, C. J., and SUTTON and FRANTZ, JJ., concur.



John BOWEN and Verva Bowen, Plaintiffs
In Error,

v.

Everett TURGOOSE, Defendant in Error.
No. 17940.

Supreme Court of Colorado.

In Department.

Aug. 26, 1937.

Rehearing Denied Sept. 16, 1937.

Proceeding to enjoin landowners from placing barriers on what plaintiff alleged was a public road running through such lands. The District Court, Garfield County, Clifford H. Darrow, J., rendered judgment for plaintiff and landowners brought error. The Supreme Court, Knauss, J., held that where neither plaintiff, his predecessors in interest, nor public were parties to quiet title proceeding brought by landowners, decree was not binding on them and did not cut off their right to use public road.

Affirmed.

1. Highways ⇐17

In proceeding to enjoin landowners from erecting barriers on road running through his land, evidence sustained finding that road was public road.

2. Judgment ⇐707

Quiet title decree embracing owners' land did not cut off rights of public to use public road over land and was not binding upon those who were not parties to the action.

BOWEN v. TURGOOSE

Cite as 314 P.2d 694

Colo. 695

3. Quieting Title ⇨52

The making of unknown persons parties defendant in quiet title action is not sufficient to cut off rights of public in and to easement over land embraced within decree.

4. Limitation of Actions ⇨10

Public easements are not subject to the bar of the statute of limitations.

5. Mortgages ⇨378

Public trustee's deed, issued upon foreclosure of deed of trust executed by landowners' predecessor in title did not bar action to enjoin landowners from placing barriers on public road running through land.

Robert Delaney, Kenneth Balcomb, Jr., Glenwood Springs, for plaintiffs in error.

Wm. Atha Mason, Rifle, for defendant in error.

KNAUSS, Justice.

In the trial court defendant in error was plaintiff and plaintiffs in error were defendants. We will refer to the parties as they there appeared.

Plaintiff sought an injunction to prevent defendants from placing bars, gates and locks on what plaintiff alleged was a public road running through lands owned by defendant, Verva Bowen; he alleged that defendants had blocked and locked said roadway and denied plaintiff and the public the use thereof.

Findings of fact and conclusions of law were entered in favor of plaintiff and from the injunctive writ issued in favor of plaintiff, the defendants bring error. For reversal it is urged (1) That the evidence adduced was insufficient to sustain the court's finding that the road existed and was used by the public since 1888 to 1953 when defendants forcibly stopped plaintiff from using the road; (2) That plaintiff's action is barred because of a quiet title decree embracing defendant's land, entered more than seven years prior to the institution of plaintiff's case; (3) That a

Public Trustee's deed issued in 1926 under foreclosure of the lands now owned by defendants precluded this action; and (4) That the evidence did not adequately describe the location, width or course of said roadway, referred to in the evidence as Ward Gulch Road.

In essence, defendants claim that the Ward Gulch Road is a private road and may only be used with their permission. In his decision the trial judge said: "Defendants knew the situation when Verva Bowen bought the Lundgren property in the year 1950. [Lundgren conveyed to Verva Bowen] She took things as they were. This included the right of the public in the Ward Gulch Road and such right could not be abrogated by the acts of the defendants. * * * They cannot bar the public from the use of Ward Gulch Road. The road belongs to the public." In his formal findings the trial court said: "The road remained for public use at all times since its inception * * *. Gates of permanent nature were first placed upon the road by the defendants some time after defendant Verva Bowen acquired the Lundgren property in the year 1950, and such gates have been kept locked by defendants during the years 1950, 1951, 1952 and 1953; that plaintiff used the road in controversy since the year 1937, at which time the defendants interrupted and prevented plaintiff from further using said road."

It would serve no useful purpose to set forth the evidence in detail. Suffice it to say that the Ward Gulch Road was used by the public continuously from 1888 until 1953 when defendants blocked its use. True, it runs through lands owned by Verva Bowen.

[1] A careful review of the record demonstrates that this road was and is a public road and was such prior to the issuance of a U. S. patent in 1892 to the predecessors in title to Verva Bowen. Lundgren, who conveyed to Verva Bowen recognized the existence of the road which the public has a right to use, when he used

the following language in his deed: "Excepting therefrom any and all easements and rights of way heretofore granted", as did his immediate grantor, Mary Sheridan, who in her deed to Lundgren provided: " * * * excepting any and all easements and rights of way heretofore granted of a public and private nature." Prior to the issuance of the U. S. patent for the land now owned by Verva Bowen this road existed and was used by the public, and continued to be so used until defendants erected their locked barriers.

Sprague v. Stead, 56 Colo. 538, 139 P. 544, 546 was an identical case. There a right of way was acquired and used prior to the issuance of a patent issued to a subsequent entryman. This court held:

"An appropriation in this manner is made with the consent of the owner previously given, and when confined to a reasonably certain and definite line creates an easement for the purposes of a highway, and subsequent entrymen and claimants take such land subject to that easement. [Citing cases.]

"The road involved has been used by the public ever since it was established without objection until 1910. This is sufficient to show acceptance by the public of the congressional grant and establish that the title to this land was taken subject to the right of way for such road." See, also, Nicolas v. Grassie, 83 Colo. 536, 267 P. 196; Leach v. Manhart, 102 Colo. 129, 77 P.2d 652.

[2] The quiet title decree referred to could not cut off the rights of the public to the use of this road. Such a decree binds only the parties to the action. Neither plaintiff, his predecessors in interest nor the public were parties to this action.

[3] The making of "unknown persons" parties defendant in such an action is not sufficient to cut off the rights of the public in and to an easement. In Hammond v. Johnson, 94 Utah 35, 75 P.2d 164 it was held that an action to quiet title determines

only that the prevailing party has title superior to, or is good as against title asserted by his adversary, and the judgment affects no one but the parties claiming by, through or under them, and did not affect any rights which the state or any other person, not a party or claiming under a party had or could assert to the property in question.

[4,5] Public easements are not subject to the bar of the statute of limitations. Dietemann v. People, 76 Colo. 378, 232 P. 676; 53 C.J.S. Limitations of Actions § 14, p. 939. Under the record before us defendants cannot rely on the public trustee's deed issued upon foreclosure of a deed of trust executed by a predecessor in title of defendant Verva Bowen as a bar to plaintiff's action.

We have duly considered the other matters urged for reversal and find them to be without merit.

Judgment affirmed.

MOORE, C. J., and SUTTON and FRANTZ, JJ., concur.



Floyd J. STANDLEY and Jordan P. McFarland, Plaintiffs In Error,
v.

AMERICAN AUTOMOBILE INSURANCE
COMPANY, Defendant In Error.
No. 18000.

Supreme Court of Colorado.
In Department.
Aug. 10, 1957.

Action by surety on bond guaranteeing remittances of C.O.D. collections to consignors of merchandise against corporate officers of obligor on said bond, a common carrier. The District Court, City and

endangered species, or eagles, and shall be assessed twenty license suspension points, or with respect to all other wildlife, a class three misdemeanor, and shall be assessed ten license suspension points.

(3) For the purpose of this section, it is deemed to be a sale or purchase of wildlife in violation of this title for a person, for money or other consideration, to offer or provide or to obtain guiding, outfitting or other services or to offer or provide a hunting or fishing license for the illegal taking, acquiring, receiving, transporting or possession of wildlife.

33-6-112 Transportation, importation, exportation, and release

(1) No person shall transport or release wildlife in, export wildlife from, or import wildlife to this state, except as provided for by the division and the department of health.

(2) Violation of this section is punishable by a fine of fifty dollars and the assessment of five license suspension points.

33-6-113 Theft of wildlife-tampering with trap

(1) No person shall take from another person, and fail to return in substantially the same condition, wildlife lawfully acquired by the other person. Violation of this subsection is determined by the values and punishment set forth in section 109 of this article. Any person from whom wildlife is unlawfully taken shall also receive restitution from the violator in the amounts set forth in section 109 of this article.

(2) No person shall tamper with, or remove, any trap, snare or other device that has been legally set. Violation of this subsection is punishable by a fine of two hundred dollars and an assessment of ten suspension license points.

33-6-114 Interference with hunting, trapping, and fishing

(1) No person shall harass, disrupt or prevent another person from

lawfully hunting, trapping, or fishing, or cause any fish, furbearer, or game animal to flee from a person lawfully engaged in hunting, trapping, or fishing.

(a) Intentional interference with hunting, trapping, or fishing is a Class 1 misdemeanor, the minimum fine for which the court cannot waive or suspend and results in the assessment of twenty license suspension points;

(b) Knowing interference with hunting, trapping, or fishing is a misdemeanor, punishable by a fine of two hundred and fifty dollars, and the assessment of fifteen license suspension points;

(c) Reckless or criminally negligent interference with hunting, trapping, or fishing is a misdemeanor, punishable by a fine of one hundred dollars, and the assessment of ten license suspension points.

(2) The following acts shall give rise to a presumption that a person has engaged in conduct constituting this offense:

(a) Use of noise or light.

(b) Giving chase by foot or by vehicle.

(c) Throwing objects or making disruptive movements.

(d) Interjection of persons or objects into the line of fire.

(e) Posting any public land as private property, or obstructing lawful access to public property.

(3) Any person convicted of a violation of this section shall be liable for all damages incurred by the person lawfully engaged in hunting, fishing, or trapping.

(4) Nothing in this section shall limit the enforcement of law by any peace officer, nor apply to persons using or enjoying property in which they have a legal interest for a commercial or private purpose.

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